

**REMARKS/ARGUMENTS**

Claims 40, 42-48, and 58-71 are pending. By way of this Amendment, claims 41 and 49-57 are cancelled without prejudice or disclaimer; claims 40, 42, 43, 46 and 58 are amended and claims 68-71 are added. Reconsideration and allowance in view of the above amendments and the following remarks are respectfully requested.

The Abstract was objected to. The objection is respectfully traversed.

It is respectfully noted that Applicants submitted an Abstract on a separate sheet in the Preliminary Amendment filed with the application on June 30, 2006.

Reconsideration and withdrawal of the objection of the abstract are respectfully requested.

Claims 40-45 were rejected under 35 U.S.C. §112, first paragraph. The rejection is respectfully traversed.

Support for claims 40-45 may be found in the application as originally filed at, for example, paragraphs [00101]-[00107] and [00132]-[00135]. It is respectfully submitted that the disclosure, including the paragraphs noted, reasonably conveys to the artisan that the inventors had possession of the claimed inventions at the time of the filing of the application. It is also respectfully submitted that the examiner has not met the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in Applicants' disclosure a description of the invention defined by claims 40-45.

Reconsideration and withdrawal of the rejection of claims 40-45 under 35 U.S.C. §112, first paragraph, are respectfully requested.

Claims 40-42 were rejected under 35 U.S.C. §102(e) over Sprinkle et al. (U.S. Patent 7,621,274). The rejection is respectfully traversed.

The standard of anticipation is identity of invention. In other words, the prior art reference must disclose the identical invention in as complete detail as is contained in the claim. See M.P.E.P. §2131 (citing Richardson v. Suzuki Motor Co., 868 F2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)).

Claim 40 recites a mask assembly comprising a frame, a cushion, and a headgear. At least one of the frame and the headgear includes a usage indicator to indicate a usage condition of the mask assembly. The usage indicator comprises at least a portion of the frame that is made of a material that exhibits stress whitening after repeated movement.

The Office Action on page 4, paragraph number 9, alleges that Sprinkle et al. disclose a frame made from transparent material and “therefore after using the mask multiple times, the transparent material changes from transparent to a more glassy/frosty material indicating usage of the mask.”

It is respectfully noted that the disclosure of Sprinkle et al. does not contain any disclosure or suggestion that the rigid plastic material of the shell 20 changes from optically transparent to a more glassy/frosty material after using the mask multiple times, as alleged in the Office Action. It is also respectfully noted that the examiner does not point with particularity to any portion of the reference as substantial evidence to support such a conclusion, as required by 37 C.F.R. §1.104(c)(2). It is further respectfully noted that the Office Action does not provide any basis in fact and/or technical reasoning to support a conclusion that the rigid plastic material of a shell 20 of Sprinkle et al. inherently changes from transparent to a more glassy/frosty material after using the mask multiple times.

As Sprinkle et al. do not disclose the identical invention recited in claim 40, Sprinkle et al. do not anticipate or render obvious the claim.

Claims 41-45 recite additional features and are allowable for the same reasons discussed above with respect to claim 40 and for the additional features recited therein.

Reconsideration and withdrawal of the rejection of claims 40-42 under 35 U.S.C. §102(e) over Sprinkle et al. are respectfully requested.

Claim 46 was rejected under 35 U.S.C. §102(e) over Gunaratnam et al. (U.S. Patent 7,185,652). The rejection is respectfully traversed.

The Office Action on page 5, paragraph number 14, alleges that Gunaratnam et al. disclose a cushion clip 14 provided to secure the cushion 13 between the cushion clip 14 and the frame 11 via a first connection in Fig. 3, and further disclose a swivel elbow 26 in Fig. 1 that is provided to the frame via a second connection. The Office Action concludes that at least one of the first connection and the second connection is provided via a one-way snap which will deform and/or break upon attempt to disassemble. Applicants respectfully disagree.

As disclosed in column 2, lines 36-46, the circular aperture 12 of the mask 10 is sized to receive a mating portion 22 of the vent/connector piece 28 of the elbow part 26. The mating portion 22 has an annular groove 23 formed therein that receives a locking means 30 in the form of a C-shaped clip attached after mating to the mask. The clip 30 has an outside diameter greater than the width of the aperture 12 and an inner diameter adapted to ensure a snug fit within the annular groove 23. The clip 30 is resilient and can expand sufficiently to allow the clip to be fitted into and removed from the groove.

It is respectfully submitted that it is clear from the above disclosure of Gunaratnam et al. that the elbow part 26 is attachable to and detachable from the mask 10 by a connection (i.e. the C-shaped clip) that will not deform and/or break upon attempt to assemble and disassemble to render the mask unusable, as recited in claim 46. The C-shaped clip 30 is resilient and has

sufficient expansion capabilities to allow the clip 30 to be fitted into and removed from the groove 23. However, it is clear that disassembly of the elbow part 26 from the mask 10 by removing the resilient clip 30 will not render the mask unusable because the clip 30 is resilient and can expand sufficiently to allow the clip to be fitted into and removed from the groove.

As disclosed in column 3, lines 51-57, of Gunaratnam et al., the cushion 13 is held to the rib 15 of the mask frame 11 by the cushion clip 14. There is no disclosure or suggestion that disassembly of the cushion clip 14 from the mask frame 11 will deform and/or break the connection between the cushion clip 14 and the mask frame 11 to render the mask unusable.

Claims 47 and 48 recite additional features and are allowable for the same reasons discussed above and for the additional features recited therein.

Reconsideration and withdrawal of the rejection of claim 46 under 35 U.S.C. §102(c) over Gunaratnam et al. are respectfully requested.

Claims 58-61 were rejected under 35 U.S.C. §102(e) over Dantanarayana et al. (U.S. Patent Application Publication 2004/0094157 A1). The rejection is respectfully traversed.

Claim 58 recites a mask assembly comprising a frame, an elbow provided to the frame and including an inlet conduit, and a valve member provided at the interference of the elbow in the frame. The valve member is configured to allow breathing of ambient air and to prevent back flow of gas towards the inlet conduit of the elbow in an unpressurized state.

Dantanarayana et al. do not disclose a valve member provided at the interference of an elbow in a frame, as recited in claim 58. As shown in Figs. 40-42, the movable portion 278 of the flap 252 is provided in the fixed housing portion 254 spaced from the mask. In the embodiment shown in Figs. 43-45, the movable portion 278 of the flap 252 is provided in the swivel elbow joint 270.

It is also respectfully noted that Dantanarayana et al. are assigned to ResMed Limited at Reel/Frame 014816/0388 and 014820/0257. It is also respectfully noted that the instant application is assigned to ResMed Limited. The undersigned certifies that at the time of the claimed invention, the instant obligation was assigned to, or subject to an obligation of assignment to, ResMed Limited. As Dantanarayana et al. qualify as prior art under 35 U.S.C. §102(c) only, the reference may not be relied upon in determining obviousness of the claimed invention for the conditions set forth in 35 U.S.C. §103(c).

Claims 59 and 61-67 recite additional features and are allowable for the same reasons discussed above and for the additional features recited therein.

Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(c) over Dantanarayana et al. are respectfully requested.

In view of the above amendments and remarks, Applicants respectfully submit that all of the claims are allowable and the entire application is in condition for allowance.

The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the examiner believe that anything further is desirable to place the application in condition for allowance, the examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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